

Department of Finance and Administration – Policy 11
Recovery of Overpayments and Other Debts Owed by Employees to the State
(Revised March, 2004)

Introduction and Background

1. This policy statement 11 has been revised to provide guidance to State agencies and departments for the recovery of (a) wage overpayments to State employees, (b) payroll-related undercollections, and (c) other miscellaneous debts.

Applicable State Law

2. According to T.C.A. §4-3-1007, the Department of Finance and Administration "shall have power and shall be required: 1) to maintain a system of general accounts embracing all the financial transactions of the state government;...(10) to exercise the rights, powers and duties (except the power to collect taxes), conferred by law upon the comptroller of the treasury...insofar as these provisions relate to financial administration and general accounting control of the state government, involving the keeping of general accounts,...[and] (11) in consultation with the comptroller of the treasury, to establish guidelines for the evaluation by agencies of their systems of internal accounting and administrative control."

Also T.C.A. §9-4-604, "No person shall draw any money from the public treasury until all debts, dues, and demands owing by such person to the state are first liquidated and paid off. The commissioner of finance and administration shall not issue any warrant upon the treasury in favor of a person in default until all such person's arrearages to the treasury are audited and paid, otherwise than by allowing such defaulter or delinquent credits on the amounts of such person's delinquencies for such sum or sums as may at any time be due and owing to such person from the treasury."

General Rule

3. Arrangements should be made to retire the owed balance within the same calendar year as the overpayment or debt occurred. Agencies and departments of state government with the exception of the University of Tennessee and Board of Regents are required to follow this policy statement.

Fair Labor Standards Act – Minimum Wage & Overtime Test

4. The Fair Labor Standards Act (FLSA) considers a wage overpayment as a loan or an advancement of wages. Recovery of wage overpayments may be deducted from an employee's earnings even if such deductions cut into the minimum wage or overtime pay due the employee.

Debt incurred because of failure to return or the loss of state funds or property must meet the FLSA minimum wage and overtime test. No deduction may be made from an employee's wages that would reduce the employee's earnings below the required minimum wage requirement. The minimum wage test cannot be avoided by paying an employee a regular paycheck, and then requiring repayment by cash or check if the repayment amount reduces the regular paycheck amount below the minimum wage and overtime compensation. The employee's overtime pay cannot be used for the repayment of a debt.

Recovery of Wage Overpayments (Or Undercollections) From Active Employees

5. Once an overpayment is discovered, the paying State agency or department should notify the employee in writing that an overpayment has occurred. A copy of this notification should be sent to the Office of the Comptroller of the Treasury (Division of State Audit), the Technical Services Division of the Department of Personnel, and the Department of Finance & Administration Payroll Section.
6. If an employee does not respond by the deadline indicated on the notification letter, the employee has waived the opportunity to respond. Recovery of the overpayment may proceed. If the employee responds to the notification letter but (a) disagrees with the overpayment amount, and/or (b) refuses to sign an authorization for repayment, then before repayment deductions begin, the employee has the right to an immediate pre-decision meeting with a person that has direct access to the agency appointing authority for this purpose. Consult with the Agency Human Resource Office Director to obtain the name of the agency or facility appointing authority or their representative.
7. The Department of Personnel will approve each current year repayment made by credit supplemental for a current year overpayment and then the Department of Finance & Administration Payroll Section will process the deduction. Repayments made by miscellaneous deduction for a prior year overpayment will also be approved by the Department of Personnel and then sent to the Department of Finance and Administration Payroll Section for processing.

8. In general, a minimum repayment of at least \$50 should be made each pay period. Amounts between \$25 and \$50 should be recovered in one deduction. In accordance with the Official Rule of the Department of Finance and Administration Chapter 0620-1-9 (Policy and Procedures Governing Write-off of Accounts Receivable), any amount under \$25.00 should not be recovered.

Recovery of Payroll-Related Undercollections from Active Employees

9. Payroll-related undercollections (typically FICA deductions) follow the applicable rules listed above with the following exceptions.
 - a) The Office of the Comptroller does not need to be notified.
 - b) The miscellaneous deduction does not need to be approved by the Department of Personnel. The employing agency approves this deduction.

Recovery of Other Debts from Employees

10. Agencies and departments should make every effort to recover other debts from employees. Employees should be notified in advance, preferably in the orientation process, that receipt of state funds and/or property constitutes an obligation to return the funds and/or property to the State of Tennessee. Upon termination of employment or upon the department's request, the employee should return the funds, or the property in good condition. In the event the funds and/or property are not returned promptly upon termination or request, a debt is incurred to the State of Tennessee. The employee should reimburse the State for any amount outstanding.

Employees should be notified of the expected recovery from losses of state funds and/or property. A copy of this notification should be sent to the Office of the comptroller of the Treasury (Division of State Audit), the Technical Services Division of the Department of Personnel, and the Department of Finance and Administration Payroll Section.

If an employee does not respond by the deadline indicated on the notification letter, the employee has waived the opportunity to respond. Recovery of the debt may proceed. If the employee responds to the notification letter but (a) disagrees with the overpayment amount, and/or (b) refuses to sign an authorization for repayment, then before repayment deductions begin, the employee has the right to an immediate pre-decision meeting with a person that has direct access to the agency appointing authority for this purpose. Consult with the Agency Human Resource Office Director to obtain the name of the agency or facility appointing authority or their representative.

Recovery of Overpayments, Undercollections, or Other Debts from Terminating Employees With One Outstanding Paycheck Available.

11. Wages in excess of the repayment deduction should be paid to the employee timely. Repayments should not create an undue delay for payment of remaining wages to employees.

Recovery of Overpayments, Undercollections, or Other Debts From Inactive Employees

12. If a final paycheck is not available and recovery by deduction is not possible, the Payroll Section will set up this debt as an accounts receivable. The debt is then subject to the provisions of Finance & Administration Policy 23 Accounts Receivable – Recording, Collection and Write-Offs.

Exceptions

13. Exception requests should be addressed to the Director of Payroll, Division of Accounts, Department of Finance & Administration.